

The Administrative Tribunal,

Considering the sixteenth complaint filed by Mrs J. M.-E. against the European Patent Organisation (EPO) on 2 February 2002 and corrected on 15 February, the EPO's reply of 6 May, the complainant's rejoinder of 22 July, the Organisation's surrejoinder of 4 October, the complainant's further statement of 11 November 2002, and the EPO's comments thereon of 4 February 2003;

Considering Article II, paragraph 5, of the Statute of the Tribunal;

Having examined the written submissions and disallowed the complainant's application for hearings;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. Some facts relevant to this case are to be found in Judgments 1829, 1894, 1951, 2045, 2046 and 2047 on the complainant's first, fourth, fifth, sixth, seventh, ninth, twelfth and thirteenth complaints.

On 3 August 2000 the complainant submitted a claim for reimbursement of medical expenses to the insurance brokers Van Breda, who are responsible for the day-to-day administration of the Collective Insurance Contract concluded by the EPO. Having received neither a reimbursement nor any other communication from Van Breda within the time limit set out in Article 23 of the Collective Insurance Contract, on 5 September she wrote to the President of the Office requesting reimbursement of her claim. In the event that he was unable to accede to her request she asked that it be treated as an internal appeal.

On 7 September Van Breda wrote to the complainant, requesting laboratory results proving the ascertained diagnoses on some of the invoices and a detailed medical report justifying the performed laboratory tests on another invoice. It also informed her that certain items claimed could not be reimbursed. According to a settlement note dated 13 September 2000 she was partially reimbursed. Regarding the non-reimbursed items, she was promised an explanatory letter.

On 5 October the Principal Director of Personnel informed the complainant that her request for reimbursement could not be granted and therefore her appeal had been registered under the reference RI/65/00. However, he pointed out that, rather than continuing with the internal appeal procedure, it would be more expeditious to resolve the dispute between herself and Van Breda by the establishment of an Invalidity Committee in accordance with Article 90 of the Service Regulations for Permanent Employees of the European Patent Office. On 8 October the complainant replied that she saw no reason for convening an Invalidity Committee: the diagnoses had already been confirmed by the previous Invalidity Committee and Van Breda had said that it was not interested in the findings of that Committee.

In its opinion dated 26 October 2001 the Appeals Committee unanimously recommended, to the extent that the medical reimbursement claims were still disputed, to reject the appeal. The Committee suggested that, if the complainant continued to disagree with the conclusions of Van Breda's medical adviser then she should request clarification from an Invalidity Committee. On 11 December the complainant was informed by the Director of Conditions of Employment and Statutory Bodies on the President's behalf that the latter had endorsed the Appeals Committee's recommendation. That is the impugned decision.

B. The complainant asserts that all the disputed diagnoses have already been confirmed by the Office's medical officers, the Invalidity Committee, or Van Breda's medical adviser. She states that Article 83 of the Service Regulations provides for compulsory health insurance; thus the Office is her insurer, it is bound by the findings of its medical officers and the Invalidity Committee, and it is "in charge" of the reimbursement of medical expenses.

Although the routine handling of the insurance contract is provided by Van Breda, she has no legal relationship with that entity; her only recourse is therefore to the Office. Furthermore, under Article 6(b) of the Collective Insurance Contract, any disputes concerning medical matters are decided by a doctor appointed as an arbitrator by mutual agreement of the EPO and the reinsurers, not by an Invalidity Committee.

She maintains that the "evidence" requested by Van Breda is for diagnoses which have already been confirmed by the Invalidity Committee and the EPO's own medical officers. This clearly represents a request for information which is an abuse of process. Now even the EPO refuses to acknowledge that these diagnoses exist and it has asked for the convening of a new Invalidity Committee, whose only purpose, in her opinion, would be to clarify whether or not the diagnoses really had been available to Van Breda. She says that the question underlying the conflict is whether the President of the Office is legally bound by the findings of the Invalidity Committee and the Office's medical officers. She says that he is. The Office should arrange for her medical expenses to be reimbursed, either by reimbursing these directly and then resorting to the recourse provided under Article 6 of the Collective Insurance Contract, or by persuading Van Breda to reimburse her expenses.

She has been placed in an unclear legal situation because neither the EPO nor Van Breda are following the decisions of the Invalidity Committee in accordance with Article 90 of the Service Regulations. The findings of the EPO's medical officers and the Invalidity Committee having already been submitted to Van Breda, there is no longer a dispute within the meaning of Article 90(1). She does not understand why the diagnoses confirmed by the Committee in terms of her eligibility for an invalidity pension cannot be used for the purposes of reimbursement of her medical expenses. All the more so, she says, because in earlier proceedings before the Tribunal, the EPO had argued that the diagnostic findings of the Invalidity Committee will have an effect on the reimbursement of her medical expenses. Further examination of the diagnoses by an Invalidity Committee is unnecessary. Furthermore, it would have "no jurisdiction", as she has presented a legal problem, not a medical one.

She argues that the only restriction in the Collective Insurance Contract placed upon the reimbursement of expenses relating to medicinal products is that these be prescribed by a physician. As this is the case here, her invoices should have been reimbursed. Citing examples, she states that Van Breda has dealt with the reimbursement of her claims in an inconsistent manner.

She requests the Tribunal to set aside the President's decision rejecting her internal appeal and to order the EPO to reimburse the amounts of several disputed invoices plus compound interest at 10 per cent per annum. She also requests compound interest at 10 per cent per annum on several invoices that have been reimbursed, but not in a timely manner. She asks that the EPO be ordered to submit to her a statement listing, in a straightforward manner, the data relevant for the purposes of calculating the sums to be reimbursed, as well as all information relating to the "material criteria and guidelines" used for determining what costs are reimbursable, and the identity and qualifications of Van Breda's medical advisers who have dealt with her claims. She also claims moral damages and costs under several heads, among these translation costs.

C. The EPO replies that the key issue in the present complaint is the reimbursability of medical claims submitted to Van Breda by the complainant. In its view, such an assessment is clearly a medical issue falling within the competence of an Invalidity Committee; it submits that it has repeatedly asked the complainant if she wished to have one convened, but she has refused.

The Organisation rejects the complainant's argument that convening a new Invalidity Committee would be useless. It submits that in Judgment 2047 the Tribunal had confirmed that an Invalidity Committee is the appropriate body to settle the issue of disputed reimbursement claims. The first Invalidity Committee had examined only the issue of the complainant's unfitness for work; a second Invalidity Committee would deliberate the disputed invoices. In the EPO's view "there is not the slightest legal uncertainty" over the competence of an Invalidity Committee for resolving this sort of dispute. In addition, the EPO denies that all of the disputed diagnoses have been checked and confirmed by an Invalidity Committee and by its medical officers. It submits that Van Breda is prepared to accept the findings of an Invalidity Committee convened for the purpose of examining the disputed invoices.

The Organisation submits that the complainant's repeated requests for proceedings under Article 6 of the Collective Insurance Contract "are mistaken" and that the Tribunal clearly stated in Judgment 2047 that such proceedings are of no concern to her.

Regarding the complainant's claim for the payment of interest for the late reimbursement of some of the medical

expenses, the EPO states that the Appeals Committee considered that such an entitlement was due, and that the Organisation is prepared to pay interest at a rate of 8 per cent per annum on "the sum due to the complainant for Van Breda's late payment, for the period between 26 September 2001 (date of the hearing on appeal 65/00) and the date of effective payment by the defendant".

The EPO submits that the Tribunal has already found that Van Breda has the right to ask the complainant for supplementary information. It comments on the complainant's claims for damages, noting that much of what has been put forth in this regard by the complainant has already been commented and ruled on by the Tribunal in previous cases. As for her claim for reimbursement of translation costs, the Organisation says that it was correct to limit access to its translation services, but that it is for the Tribunal to consider it under any eventual award for costs.

D. In her rejoinder the complainant maintains her position that there is no dispute within the meaning of Article 90(1) of the Service Regulations, thus an Invalidity Committee would have "no jurisdiction". She accuses the EPO of trying to disguise the problem on which the complaint is based; she also accuses it of trying to confuse the different functions of the medical officer under Article 90 and a medical practitioner under Article 89(1) in order to make it appear that setting up a new Invalidity Committee is statutorily correct. She reiterates that all diagnoses have already been "confirmed" by the first Invalidity Committee. She accuses the EPO of obstructing her attempts to find a solution "outside" the Tribunal. She says that she is not litigious; it is the EPO that has provoked her complaints.

She submits that she is entitled to reimbursement for translation costs regardless of the outcome of her complaint.

E. In its surrejoinder the Organisation observes that there is "a structural dysfunction in the communication between the complainant and Van Breda" and it notes that her previous complaints have not contributed to any improvement in this regard. Given the fact that the outstanding disputed reimbursements amount to a considerable sum, which is clearly against her interests, it hopes that the complainant could reconsider her refusal to convene an Invalidity Committee.

It reiterates that there is not the slightest legal uncertainty that an Invalidity Committee would be competent to settle the issue of the non-reimbursed claims. It presses its other pleas.

F. In her further statement the complainant alleges that the Organisation has attempted to mislead the Tribunal. She makes several allegations against the first Invalidity Committee and its proceedings.

G. In its final comments the EPO asserts that the complainant is trying to discredit the Invalidity Committee's recommendation concerning her unfitness for work. However, she did not challenge the President's decision thereon, and thus it has become final. It denies all her accusations and states that it has not tried to mislead the Tribunal.

CONSIDERATIONS

1. The complainant is challenging a final decision rejecting her internal appeal RI/65/00 concerning non-reimbursement of medical costs by Van Breda. She mainly seeks reimbursement in respect of various medical treatments and prescriptions, with compound interest, and wants the EPO to forward to her certain data and guidelines used for calculating reimbursement.

2. At the heart of the complainant's claim is a dispute between herself and Van Breda as to the necessity of certain medical tests and treatments. Acting on the advice of its medical adviser, Van Breda refuses to pay the items claimed unless and until the complainant produces detailed medical reports and other evidence proving that such tests and treatments were medically necessary and that they were insured services. In the EPO's view, this is a medical issue which should be referred to an Invalidity Committee.

3. The complainant, on the other hand, contends that Van Breda is refusing to reimburse various medical expenses on the grounds that certain diagnoses have not been proved, whereas, in her view, confirmation regarding those diagnoses has already been given by the Invalidity Committee that assessed her unfitness for work. In response, the EPO argues that the Invalidity Committee which was previously mandated to assess whether or not the

complainant was permanently disabled could not and did not decide the separate issue, raised by Van Breda, as to the necessity of the claimed medical expenses and their relationship to the complainant's medical condition.

4. There can be no doubt that the dispute between the complainant and Van Breda is a medical issue and that her resulting claim against the EPO must be decided by an Invalidity Committee. In Judgment 2047, dealing with precisely this issue and this same complainant, the Tribunal said:

"14. Whether Van Breda's refusal of the complainant's claim on its merits is valid or not is a medical issue that can only be addressed by the Invalidity Committee."

5. As indicated, the complainant's primary position is that her diagnoses and the necessity of the claimed treatments was established by the Invalidity Committee which determined that she was permanently disabled. This is a surprising contention given that the Invalidity Committee's duty was not to determine the appropriateness or necessity of treatments but rather to determine whether or not the complainant's condition was such as to make her incapable of further work.

6. Somewhat surprisingly, given their respective positions, neither the complainant nor the EPO produced a copy of the Invalidity Committee's report in support of their arguments. Accordingly, the Tribunal called on the EPO to produce it and, after this had been done, gave the complainant an opportunity to comment on it.

7. In her written comments, as in the great bulk of her written pleadings, the complainant persists in pursuing collateral and irrelevant issues and making allegations of bad faith against the EPO, Van Breda and the various medical practitioners who have dealt with her file from time to time. These allegations are without foundation and are abusive and vexatious. They do nothing to advance the complainant's claim although, quite naturally, they provoke in the EPO a feeling that it is obliged to respond to them, however irrelevant they may be.

8. An examination of the Invalidity Committee's report reveals that it did not deal in any substantive way with the accuracy of the various and conflicting diagnoses of the complainant's condition and that, in fact, there was disagreement amongst the doctors involved, particularly between the doctor appointed by the complainant and the other two doctors. As might be expected from a body whose sole function was to determine whether or not the complainant was fit to work, the report addresses that question alone and does not endorse the validity of any particular diagnosis. The relevant part of the report is as follows:

"2.1 The permanent employee is suffering from total invalidity, ie for health reasons is physically or mentally completely unable to perform his/her EPO duties at the grade assigned under Art. 3(1) ServRegs

[...]

Reasons for the finding under point 2 above:

[The complainant's] illness since 1993 has rendered her permanently incapable of work. At the time of her final examination on 9 February 1999, she had not responded to treatment and was suffering from a chronic illness that had seriously impaired her physical and mental health. The diagnoses confirming her invalidity will be marked 'confidential medical information' and sent separately to the insurer."

9. Despite the complainant's argument to the contrary, it is quite clear that the Committee did not agree on any specific diagnosis of the cause of her invalidity but simply on the fact that, for whatever reason, she was incapable of performing the duties of her post. A letter from the doctor appointed by the EPO on the Committee confirms this:

"A perusal of the file concerning the invalidity procedure for [the complainant] from 1997 to 1999 has shown that its several hundred pages contain no medical findings other than those submitted by [the complainant] herself from 1993 to 1998, and therefore known to her.

The report sent to your personnel service on 31 March 1999 concluded the procedure.

That final report was the result of the undersigned's personal evaluation of the case, which took account *inter alia* of the notes taken by herself, assessments based on differential diagnoses, a critical socio-medical appraisal of the findings and of the course of the illness, and a study of the relevant literature."

10. What is more, it is obvious that even if the report of the Invalidity Committee had clearly specified a particular diagnosis, that would still not establish the necessary link between that diagnosis and the expenses for claimed treatments and medications which forms the subject of the disagreement between the complainant and Van Breda.

11. In fact, since all the invoices claimed in this case are dated from the months of May, June and July 2000 and the Invalidity Committee's report dates from the year 1999, it is obvious that, in this file at least, the complainant cannot invoke the latter as an approval of her claim to reimbursement of the former. Nor can it be of any help to the complainant to aver as she does that Van Breda's medical adviser is somehow foreclosed from approving her claim; if in fact the doctor had previously approved any or all of the claims it will be for him to explain himself to the Invalidity Committee.

12. For reasons which can be known only to herself, the complainant continues to resist suggestions by the EPO that her numerous claims, including this one, should be referred, as the Service Regulations clearly require, to an Invalidity Committee for final determination. In this regard, it is impossible to understand what benefit the complainant hopes to obtain from her persistent and continuous recourse to litigation. The Tribunal endorses the following passage from the EPO's surrejoinder:

"Prior to entering into a discussion of the merits, and bearing in mind that this complaint is not the first and not the last complaint, not to speak of internal appeals, dealing with non-reimbursement of claims by Van Breda (complaints Nos. 17 to 25 have been filed, but are currently suspended), the defendant sees fit to make a brief observation. It is obvious that there is a structural dysfunction in the communication between the complainant and Van Breda. Her previous complaints to the Tribunal did not contribute to an improvement (see judgments Nos. 1894, 1951, 2045, 2046 and 2047). In view of this stalemate and the fact that outstanding reimbursement claims amount to more than €25 000 - a situation that is clearly contrary to the complainant's interests - the defendant wonders whether the complainant could not in the end reconsider her refusal to convene an Invalidity Committee under Article 90(2) [of the Service Regulations] and agree to the convening of a second Invalidity Committee in order to settle the disputed reimbursement claims - not only those at stake in the present complaint - and to sort out evident misunderstandings. Refusing such a global approach, which is the only statutory way to find a settlement for claims now in dispute for six years [...], will only render a solution more and more difficult. As the complainant herself acknowledges [...], the sheer material volume of her file on refused reimbursement claims is such that mailing is no longer possible. In view of this situation, the defendant considered that it would not be useful to take this initiative against the express wish of the complainant."

13. Once again, as it did in Judgment 2047, the Tribunal can only repeat that its competence to determine the question is conditional upon the complainant obtaining a ruling from the Invalidity Committee. Since she has failed to do so, her complaint must be dismissed.

14. The abusive and vexatious nature of the complainant's allegations and her persistent insistence on having recourse to litigation whose outcome can only be futile renders her liable, once again, to a costs penalty (see Judgment 2211). However, the Tribunal will defer the pronouncement of such penalty until its next session in the hope that the complainant, after considering the present judgment and the Tribunal's previous rulings, will at last take the only step which can offer her any hope of success.

If the complainant fails to advise the Tribunal in writing before 1 October 2003 that she has agreed to submit all outstanding claims for reimbursement of medical expenses to an Invalidity Committee the Tribunal will take up the matter of costs at its next session in November 2003.

DECISION

For the above reasons,

1. The complaint is dismissed.
2. The question of costs is reserved for decision at the Tribunal's next session.

In witness of this judgment, adopted on 16 May 2003, Mr Michel Gentot, President of the Tribunal, Mr James K. Hugessen, Vice-President, and Mrs Mary G. Gaudron, Judge, sign below, as do I, Catherine Comtet, Registrar.

Delivered in public in Geneva on 16 July 2003.

Michel Gentot

James K. Hugessen

Mary G. Gaudron

Catherine Comtet

Updated by PFR. Approved by CC. Last update: 23 July 2003.